

10168 *Pattern 60, Formal Settlement Stipulation in CA Case:* Although the specific content of a formal settlement stipulation will vary depending upon the circumstances present in a particular case, the following is a suggested pattern for use in formal settlements in CA cases:

ABC Company

Respondent

and

XYZ Union

Case

Charging Party

and

Mutual Benefit Society

Intervenor

FORMAL SETTLEMENT STIPULATION

I. INTRODUCTION

Through this formal settlement stipulation, the parties to this proceeding -- ABC Company (Respondent), XYZ Union (Charging Party), Mutual Benefit Society (Intervenor), and the General Counsel of the National Labor Relations Board --agree that, upon approval of this stipulation by the Board, a Board Order in conformity with its terms will issue [and a court judgment enforcing the Order will be entered]. The parties also agree to the following:

II. JURISDICTION

- 1) Respondent is a Delaware corporation with its principal office in New York, New York. It operates a plant in**

Columbia, Alabama (the Columbia plant), where it is engaged in the manufacture, non-retail sale, and distribution of furniture.

- 2) In conducting its business operations at the Columbia plant during the one-year period ending June 30, 20__, Respondent purchased and received goods valued in excess of \$50,000 directly from outside the State of Alabama.**
- 3) Respondent is now, and has been at all material times, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.**

III. LABOR ORGANIZATION STATUS

The Charging Party and the Intervenor are labor organizations within the meaning of Section 2(5) of the Act.

IV. PROCEDURE

- 1) FILING AND RECEIPT OF CHARGE(S). On June 1, 20__, the Charging Party filed a charge in Case _____ which was served on Respondent on June 1, 20__. On June 8, 20__, the Charging Party filed an amended charge in Case _____ which was served on Respondent on June 8, 20__. On June 15, 20__, the Charging Party filed a second amended charge in Case _____ which was served on Respondent on June 15, 20__. Respondent acknowledges receipt of the charge, amended charge and second amended charge.**
- 2) ISSUANCE OF COMPLAINT. On ____ (date)_____, the Regional Director for Region ____ of the Board issued a Complaint and Notice of Hearing in Case _____ alleging that Respondent violated the National Labor Relations Act. Respondent, the Intervenor, and the Charging Party each acknowledge receipt of a copy of the Complaint and Notice**

of Hearing which was served by certified mail on June 18, 20_.

[Note: Where an answer to the complaint(s) has been filed, an additional numbered paragraph with the following language should be used to withdraw the answer. See sec. 10164.4.] **By entering into this stipulation, the parties agree that the Answer to the Complaint filed by Respondent on or about _____, is withdrawn.**

3) WAIVER. All parties waive the following: (a) filing of answer; (b) hearing; (c) administrative law judge's decisions; (d) filing of exceptions and briefs; (e) oral argument before the Board; (f) the making of findings of fact and conclusions of law by the Board; and (g) all other proceedings to which the parties may be entitled under the Act or the Board's Rules and Regulations.

4) ADMISSION. [Note: This paragraph is necessary where there is no provision for entry of a court judgment. See sec. 10164.5.] Respondent admits the allegations contained in paragraphs __ of the complaint.

5) THE RECORD. The entire record in this matter consists of the following documents: this stipulation; the charge; amended charge; second amended charge; and Complaint and Notice of Hearing. Copies of the charge, amended charge, second amended charge, and Complaint and Notice of Hearing are attached as Exhibits __ through __.

[Note: Affidavits of service of the charge, amended charge, second amended charge, and complaint and notice of hearing should be included if the service of these documents and their receipt by the parties has not been set forth in the stipulation. The answer should be included if respondent or the intervenor insists.].

6) ENTIRE AGREEMENT. This stipulation constitutes the entire agreement between the parties, and there is no agreement of any kind, verbal or otherwise, that alters or adds to it. [The following may be added only in stipulations providing for

court judgment. See sec. 10130.8] **It is understood that the signing of this stipulation by Respondent does not constitute an admission that it has violated the Act.**

7) SCOPE OF THE STIPULATION AND RESERVATION OF EVIDENCE. This stipulation settles only the allegations in the above-captioned case(s), and does not constitute a settlement of any other cases or matters. It does not preclude persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters which precede the date of the approval of this stipulation regardless of whether those matters are known to the General Counsel or are readily discoverable. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned case(s) for any relevant purpose in the litigation of this or any other cases, and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to that evidence.

8) EFFECTIVE DATE. This stipulation is subject to the approval of the Board, and it does not become effective until the Board has approved it. General Counsel will file with the Board this stipulation and the documents constituting the record as described above. Once the Board has approved the stipulation, Respondent will immediately comply with the provisions of the order as set forth below.

V. FACTS

[When appropriate. See sec. 10166.6. If a bargaining order is required, set forth a description of the appropriate bargaining unit and the labor organization's majority status in that unit.]

VI. ORDER

Based on this stipulation and the record as described above, and without any further notice of proceedings, the Board may immediately enter an order providing as follows:

Respondent, ABC Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

[8(a)(1)]

(a) [NOTE: Insert language covering specific 8(a)(1) violations alleged in complaint; likewise, the notice should be patterned after the provisions of the order.]

(b) In any other [or "like or related"] manner interfering with, restraining, or coercing its employees in the exercise of their right to self organization, to form labor organizations, to join or assist XYZ Union or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

[8(a)(2)]

(c) Dominating or interfering with the administration of Mutual Benefit Society, or dominating or interfering with the formation or administration of any other labor organization of its employees, and from contributing financial or other support to Mutual Benefit Society or to any other labor organization of its employees.

[8(a)(2)]

(d) Recognizing Mutual Benefit Society as the representative of any of its employees for the purposes of dealing with Respondent concerning grievances, labor

disputes, wages, rates of pay, hours of employment, or other terms and conditions of employment.

[NOTE: If the case involves assistance only, and not domination, the following paragraph should be substituted for subparagraph (a) above:

"Contributing financial or other support to Mutual Benefit Society or to any other labor organization of its employees."

and the following language should be added to subparagraph (b) :

"unless and until that organization has been certified by the National Labor Relations Board as the exclusive representative of those employees."]

[NOTE: If the case involves a collective-bargaining agreement between Respondent and the assisted or dominated organization, an additional provision should be added to the order, if it is appropriate, to set aside the contract. See, e.g., *Farmer's Energy Corporation*, 266 NLRB 722 (1983); *International Metal Products Co.*, 104 NLRB 1076 (1953).]

[8(a)(3)]

(e) Discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to hire or tenure of employment or any other term or condition of employment, in order to discourage membership in XYZ Union, or in any other labor organization.

[8(a)(5)]

(f) Refusing to bargain collectively with XYZ Union as the exclusive representative of all its employees at the Columbia, Alabama, plant, excluding office clerical employees, guards, professional employees, and supervisors as defined in the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

[8(a)(2)]

- (a) Withdraw all recognition from Mutual Benefit Society as representative of any of its employees for the purpose of dealing with the Respondent with respect to grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment, and completely disestablish Mutual Benefit Society as such representative.**

[NOTE: If the case involves assistance only, and not domination, the language "and completely disestablish Mutual Benefit Society as such representative" should be omitted, and in its place should be added the language "unless and until the organization has been certified by the National Labor Relations Board as such representative."]

[8(a)(3)]

- (b) Within 14 days from the date of the Board's Order, offer [names of employees] full reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority, or any other rights or privileges previously enjoyed.**

[If the agreement between the parties reflects a date certain for the reinstatement of employees this paragraph should be amended accordingly.]

- (c) Within 14 days of the Board's Order, remove from Respondent's files any reference to the discharge of [name of employees] and within 3 days thereafter notify those employees, in writing, that this was done, and that the discharges will not be used against them in any way.**

- (d) Make whole the following employees for any loss of pay they may have suffered by reason of the [alleged] discrimination against them, by payment to them, of the amounts set opposite their respective names:**

[list]

(e) Make whole the above-named employees for any additional loss of pay caused by Respondent's failure, if any, to reinstate them in accordance with the provisions of this Order, within 14 days from the date of this Order, by payment to them of the respective amounts that they would have earned if properly reinstated, from the 15th day after the date of this Order to the date of a proper offer of reinstatement, less their net earnings during such period, said amounts to be computed on a quarterly basis.

【NOTE: The language in (e) need only be used where the reinstatement is to follow the issuance of the Board's Order Approving the stipulation. It should be modified accordingly if the parties' agreement contains a date certain for reinstatement.】

【NOTE: *Installment payments:* When a formal settlement stipulation provides for installment payments, the Region should add the following sentence: "This stipulation is subject to the approval of the Board and, immediately upon approval by the Board it will be *retroactively* effective to the date of execution of the stipulation." Alternatively, the Region can make the first installment payment due 30 days (or some other specific time period) after the Board's approval of the stipulation with subsequent payments due every 30 days (or some other specific time period) thereafter. See also sec. 10603 of the Compliance Manual.】

(f) Make whole the following employees for loss of pay suffered by reason of the discrimination against them, by payment to them of the amounts set forth opposite their respective names and at the times set forth in the schedule that follows.

SCHEDULE

Names of Employees	Amt. Due and Date of Payment			Total
	8/1/20	9/1/20	10/1/20	
J. Smith	\$500.00	\$500.00	\$350.00	\$1,350.00
M. Brown	900.00	900.00	325.00	2,125.00
S. Cohen	600.00	600.00	325.00	1,525.00

Total \$2,000.00 \$2,000.00 \$1,000.00 \$5,000.00

(g) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

[NOTE: This provision is unnecessary if the stipulation contains an agreed-upon amount of backpay.]

[8(a)(5)]

(h) Upon request, bargain collectively with XYZ Union as the exclusive representative of all its employees at its Columbia, Alabama, plant, excluding office clerical employees, guards, professional employees, and supervisors, as defined in the Act, with respect to rates of pay, wages, hours of employment, and other conditions of employment.

[NOTE: When a refusal to bargain occurs during the certification year, the certification year should be extended to compensate for that period of time during which good-faith collective bargaining did not occur due to respondent's unlawful refusal to bargain (*Mar-Jac Poultry Co.*, 136 NLRB 785 (1962)). In cases involving refusals to bargain during the certification year, the bargaining order should conform to this provision and specifically extend the certification year for the appropriate period of time. See *Van Dorn Plastic Machinery Co.*, 300 NLRB 278 (1990); *General Electric Co.*, 163 NLRB 198 (1967). For example, a Board order may read as follows:

On request, bargain with the Union as the exclusive representative of the employees in the Unit and if an understanding is reached, reduce it to writing and sign it. On resumption of bargaining the Union's status as the exclusive collective-bargaining representative of the Unit shall be extended for ____ months thereafter as if the initial year of the certification has not expired.]

[NOTE: In cases when there has been no bargaining during the certification year, the word "commencement" should be substituted for "resumption."]

[ALL CASES]

- (i) Within 14 days of service by the Region, post at its Columbia, Alabama plant copies of the attached notice marked "Appendix A." [Attach to the stipulation a copy of the Notice to Employees and mark it "Appendix A." For guidance regarding notice language, see sec. 10132.3] Copies of the notice, on forms provided by Region __, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Respondent will take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material.**

[NOTE: In all CA and CB cases, where the company and union as co-respondents have entered into a joint settlement agreement, the settlement should provide for posting by respondent/company of the notice signed by the union respondent by inserting an additional paragraph after (i) as follows:

Post at the same places and under the same conditions, as set forth above, copies of the attached notice to employees marked "Appendix B" [Union - Notice to Employees and Members] as soon as they are provided to Respondent by Region [__].

- (j) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.**

[NOTE: If the stipulation contains no provision for a consent judgment, there must be an admission of the allegations of the complaint or a stipulation of facts showing the commission of unfair labor practices (see par. II4). Such an admission or stipulation is essential to enforcement of the Board order in the Court of Appeals in the event of respondent's failure to comply. See sec. 10164.5.]

VII. ENFORCEMENT OF ORDER.

The United States Court of Appeals for any appropriate circuit may, on application by the Board, enter its judgment enforcing the Order of the Board in the form set forth above. Respondent waives all defenses to the entry of the judgment, including compliance with the order of the Board, and its right to receive notice of the filing of an application for the entry of such judgment, provided that the judgment is in the words and figures set forth above. However, Respondent shall be required to comply with the affirmative provisions of the Board's Order after entry of the judgment only to the extent that it has not already done so.

ABC Company
Respondent
By

Joe B. Smith, President
[address]

Date

XYZ Union
Charging Party
By

Sam Brown, International Representative
[address]

Date

Mutual Benefit Society
Intervenor
By

President
[address]

Date

Approval recommended:

Date

Attorney, Region _____
National Labor Relations Board
[address]

Approved:

[or]

Office of the General Counsel
National Labor Relations Board
Washington, D.C. 20570

Regional Director,
Region _____
[address]

Date

[NOTE: As set forth above in Sec. 10164.7, unilateral formal settlements must be approved by the General Counsel while bilateral formal settlements are approved by the Regional Director.]